

In re Patent Application of:
Martin Hering
Serial No. 09/705,152

Further, the Applicant and the undersigned would like to thank the Examiner for reconsidering the opinion stated in the above-referenced Office Action that Collins and Barton teach all of the structural elements set forth in the claims and to use these elements in the recited methods would have been obvious especially in light of the preponderance of supporting evidence of success and acknowledgment of a need presented in the earlier filed exhibits.

The Examiner states that Collins and Barton teach all of the structural elements set forth in the claims, to use these elements in the recited method steps (of claims 38-61) would have been an obvious expedient in the art to use the structure in the manner for which it was designed. Respectfully, the turnstile, any turnstile, is typically used and well known to be used to control and block passage. The cited references and indeed all known references do not and have not taught nor suggested that the turnstile be used as an advertising medium. There is no teaching, nor suggestion that the arm being used to block such passage carry any indicia, and more specifically advertising indicia.

As stated in the background of the specification (page 3, lines 3-7), conventional turnstiles do not take advantage of their premier locations, and while they perform their blocking functions admirably, they take up advertising space, and more important they take people's eyes off wall advertisements as the people concentrate on passing through the turnstile.

Declarations of the inventor provide a preponderance of evidence in support of the success of the claimed invention, a method of advertising employing a turnstile. The Declaration of Martin Hering dated May 21, 2002 is herein presented to formally ask the Examiner to enter the Exhibits presented in the Response to Office Action of July 6, 2001, Paper No. 6, and to enter Declarations earlier presented in related applications which are felt to provide yet further evidence of success for the claimed invention. By way of example, and with reference with Exhibit A filed in Paper No. 6, article titled "Diamond Joins Advertisers Line-Up to Deliver Knew Pitch At Turnstiles," marketers are looking

In re Patent Application of:
Martin Hering
Serial No. 09/705,152

for new venues for their messages because the public has become almost immune to advertising. The director of public relations states "People are becoming so used to seeing ads that advertisers are trying to find places that people are not expecting to see ads." This would not only suggest a teaching away from the claimed invention by the traditional advertiser but a true satisfying of a need, the essence of our patent system. Further, the claimed invention satisfies the need regardless of the selected embodiment of the structure used in the claimed method.

Consider again that the claimed invention satisfies a need. As stated by the Examiner in the above-referenced Office Action, neither Collins nor Barton teach that it is known in the art to provide the method of advertising set forth for the claimed invention, yet states that because structural elements known to Collins and Barton are used in the claimed invention, such advertising use would be obvious. Respectfully, it must be appreciated that Collins teaches turnstiles and Barton teaches a luggage identification tag. Such references can only be combined having the benefit and guidance of the Applicant's teachings. Therefore, it can only be through hindsight that one would consider advertising presented in the turnstile passageway using the turnstile arm as called for in the present invention. This could not have been the intention of the patenting process, the promotion of the useful arts, and awarding creativity with exclusivity.

Consider the elements of independent Claim 62 the preamble in the method claim must be acknowledged in as earlier addressed, presents a claim to an advertising method. Neither Collins nor Barton address advertising. Further, the preamble provides for an advertising method employing a turnstile. Neither Collins nor Barton suggests that advertising be used by their devices in the manner taught by the inventor. Collins directs its teachings in disclosure to indicating a locked or unlocked condition of the arm. It would appear to be a teaching away from the claimed invention, since any advertising would be considered a distraction from the intended purpose set forth by Collins.

The claimed invention includes a turnstile operable for blocking a passageway. The step or act of providing the turnstile having an arm blocking a passageway is but one element of the claimed invention. Not indicia alone, but positioning the indicia comes only from the teachings of the Applicant. Given Barton's tag, one would not know where to attach it or for what purpose, other than identifying the owner of the turnstile. No reference known to the Examiner, nor to the Applicant begins to suggest the features of the claimed invention.

The Examiner responds to arguments made by the Applicant by stating that Barton is cited as a well-known teaching of displaying indicia, and that the indicia aspects could be advertising or any kind of indicia. However, the claimed invention is not to display indicia. The claimed invention is to display indicia in a certain manner that can only be known because of the Applicant's teachings. It must be kept in mind that the claimed invention is directed to an advertising method employing a turnstile, and more particularly to a turnstile carrying advertising indicia by the turnstile arm.

The Applicant and undersigned would like to draw attention to the specification as originally filed and, by way of continued example, to the discussion of prior art, page 2, line 6, indicating that turnstiles work well to control the flow of a crowd. However, they also use a large amount of space, which could be used for other purposes. In particular, and as further supported by the background and the specification, advertising informs and generates revenue. High visibility locations are continually being sought, with prime locations subject to a great deal of competition between advertisers. With continued reference to the specification, page 3, paragraph 1, turnstiles occupy a position which is highly trafficked, since everyone must pass through the turnstile, and highly visible since most people look at the turnstile as they pass through. Conventional turnstiles, however, do not take advantage of their premier location, and while they perform their blocking and counting functions admirably, take up advertising space and, more importantly, take people's eyes off wall

In re Patent Application of:
Martin Hering
Serial No. 09/705,152
_____ /

advertisements as they concentrate on passing the turnstile. Again, the Examiner is asked to consider not simply the turnstile, but the claimed invention, which includes the turnstile and how it functions to provide the advertising having advertising indicia viewed by the person looking at the arm.

Until the present invention, nowhere could such advertising techniques or use of the turnstile be found. The Examiner is asked to reconsider the arguments presented in the § 1.111 amendment and to further consider the following comments as supported by the attached Declarations of the inventor in concluding that the earlier rejections of obviousness should, in fact, be withdrawn and the application placed in a condition for allowance.

In arguing that hindsight was not a part of the Examiner's opinion, the Examiner has stated that so long as he takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, a reconstruction is proper in rejecting claimed inventions. It appears that the view of the Examiner is that while the specific intended use of Barton is for luggage, it is believed that such teachings are not limited to that one intended use. Respectfully, the Examiner has not been able to find prior art teaching the use of a turnstile arm for providing advertising, and it would appear that an objective evaluation and interpretation the evidence provided by actual users would show that those of ordinary skill in the art would not have advertised in such a manner until taught to do so by the inventor.

Since the Declarations herein presented for entry in this case address specifically questions raised by the Examiner, the Examiner is asked that they be entered for consideration in an appeal should it be necessary. The evidence provided and the statements made in the attached Declaration of Martin Hering should clearly show a distinction between the claimed invention and what others skilled in the art would propose, and that a real identifiable need was satisfied by the Examiner's "claimed invention" regardless of the structural embodiments.

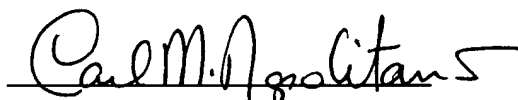
In re Patent Application of:
Martin Hering
Serial No. 09/705,152

Further, the Examiner is asked to consider that a particular embodiment of the claimed invention may certainly be employed by the Applicant. However, the invention that is addressed by satisfied customers is not a particular embodiment but, in fact, the concept of providing advertising where it has never been provided before, nor thought to be provided, until the applicant's teachings.

Again, the Applicant and the undersigned would like to thank the Examiner for his willingness to reconsider the patentability of the claimed invention and allowance of the application. In response to the telephone interview identified above, the new claims are herein presented to more clearly and distinctly claim the subject matter, which Applicant regards as invention. It is requested that the Examiner enter the new claims as well as the Declarations herein presented in support for allowance or alternatively to place the application in a better condition for appeal.

In view of the arguments provided herein, it is submitted that the claims now in the case clearly distinguish over the prior art and the application in a condition for allowance. A Notice of Allowance is requested. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned at his convenience.

Respectfully submitted,



Carl M. Napolitano, Ph.D.

Reg. No. 37,405

Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.

255 S. Orange Avenue, Suite 1401

Post Office Box 3791

Orlando, Florida 32802

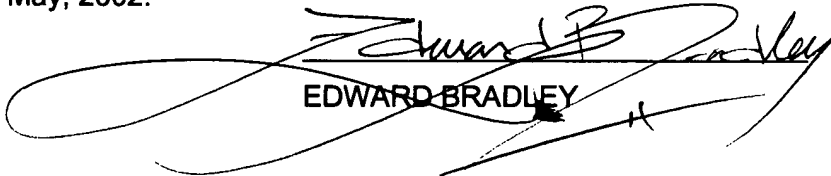
(407) 841-2330

Agent for Applicant

In re Patent Application of:
Martin Hering
Serial No. 09/705,152
_____ /

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the
United States Postal Service as first class mail in an envelope addressed to:
ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231, on
this 22nd day of May, 2002.


EDWARD BRADLEY

In re Patent Application of:
Martin Hering
Serial No. 09/705,152

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In The Title: Please strike the title reading "Indicia Device For Turnstile And Method Of Use" as originally filed and replace with -- **ADVERTISING METHOD USING A TURNSTILE --**.

In the Claims:

Please cancel originally filed claims 38-61, and add the following new claims 62-85:

– 62. An advertising method employing a turnstile, the advertising method comprising:

providing a turnstile for defining a passageway, the turnstile having an arm movable into the passageway for blocking passage of a person therethrough and out of the passageway for permitting passage therethrough; and

carrying indicia by the arm, wherein the indicia is positioned for viewing by the person when the arm is in the passageway blocking passage therethrough.

63. A method according to Claim 62, further comprising covering at least a portion of the arm with a sheet for viewing the indicia through a transparent portion thereof.

64. A method according to Claim 62, further comprising placing a sleeve onto the arm for covering the indicia, the sleeve having at least a transparent portion for viewing the indicia therethrough.

65. A method according to Claim 64, further comprising:
providing a collar for removably securing the sleeve to the arm; and
securing the sleeve to the arm using the collar.

66. A method according to Claim 64, further including:
providing a sheet for carrying the indicia thereon;
placing the sheet within the sleeve; and
securing the sleeve to the arm.

67. A method according to Claim 62, further comprising placing a sleeve onto the arm for carrying the indicia therein.

68. A method according to Claim 67, further including:
providing a sheet for carrying the indicia thereon; and
placing the sheet within the sleeve.

69. A method according to Claim 62, further comprising:
providing a cover having a transparent portion for viewing the indicia therethrough; and
placing the cover onto the arm.

70. An advertising method comprising:
providing a turnstile for defining a passageway, the turnstile having a plurality of arms individually movable into the passageway for blocking passage of a person therethrough and movable therefrom for permitting passage therethrough; and
carrying indicia by at least one of the plurality of arms and positioning the at least one of the plurality of arms for viewing the indicia by the person when the one of the at least one of the plurality of arms is blocking passage.

In re Patent Application of:
Martin Hering
Serial No. 09/705,152

71. A method according to Claim 70, further comprising:
carrying a second indicia on a second of the plurality of arms and
positioning the second indicia for viewing by the person when the second arm is
blocking passage.

72. A method according to Claim 70, further comprising covering at
least a portion of the at least one of the plurality of arms with a sheet for viewing
the indicia through a transparent portion thereof.

73. A method according to Claim 70, further comprising placing a
sleeve onto the at least one of the plurality of arms for covering the indicia, the
sleeve having at least a transparent portion for viewing the indicia therethrough.

74. A method according to Claim 73, further comprising:
providing a collar for removably securing the sleeve to the at least one of
the plurality of arms;
securing the collar to the sleeve; and
securing the collar to the at least one of the plurality of arms.

75. A method according to Claim 73, further including:
providing a sheet for carrying the indicia thereon;
placing the sheet within the sleeve; and
securing the sleeve to the arm.

76. A method according to Claim 70, further comprising placing a
sleeve onto the at least one of the plurality of arms for carrying the indicia
therein.

77. A method according to Claim 76, further including:

providing a sheet for carrying the indicia thereon; and
placing the sheet within the sleeve.

78. A method according to Claim 70, further comprising:
providing a transparent cover for viewing the indicia therethrough; and
placing the cover onto the at least one of the plurality of arms.

79. A method of advertising comprising displaying advertising indicia
from an arm of a turnstile for viewing by a person passing into a passageway
defined thereby when the arm blocks passage therethrough.

80. A method according to Claim 79, further comprising:
moving the arm for providing access through the passageway;
moving a second arm into the passageway for blocking passage
therethrough, wherein the second arm is carrying advertising indicia for viewing
thereof when the second arm blocks the passage for a second person passing
therein.

81. A method according to Claim 79, further comprising covering at
least a portion of the arm with a sheet for viewing the indicia through a
transparent portion thereof.

82. A method according to Claim 79, further comprising placing a
sleeve onto the arm for carrying the indicia thereby.

83. A method according to Claim 82, wherein the indicia is carried by at
least one of on an inside surface of the sleeve and on an outside surface of the
sleeve.

84. A method according to Claim 79, wherein the indicia is carried on a
sheet, and wherein the sheet is carried by the arm.

In re Patent Application of:
Martin Hering
Serial No. 09/705,152

85. A method according to Claim 84, wherein the sheet is carried within a transparent cover covering at least a portion of the arm. --